

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

C.M.A.No.362 OF 2014

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is directed against the order, dated 06.12.2013, passed in O.A.A.No.529 of 2006 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad whereunder and whereby, the claim of the appellants/applicants under Section 16 of the Railway Claims Tribunal Act, 1987 read with Sections 124-A and 125 of the Railways Act, 1989 with regard to grant of compensation of Rs.4,00,000/- consequent on the death of the deceased Jangili Bhoomaiah in a railway accident that took place on 7/8.1.2006 was dismissed.

2. Heard the learned counsel for the appellants/applicants and the learned Standing Counsel for the respondent/Railways.

3. Learned counsel for the appellants/applicants would contend that the deceased Jangili Bhoomaiah was a *bona fide* passenger and he died in an untoward incident of railway accident caused by train No.8561 Dakshin Link Express travelling from Khammam to Warangal on 7/8.1.2006; that there is evidence of A.W.2 to show the purchase of a ticket by the deceased Jangili Bhoomaiah; that there is also other evidence to establish that the subject death as the outcome of an untoward incident of railway accident i.e., accidental fall from train; that further, the respondent has neither examined a single person nor filed any document to disbelieve the evidence adduced on behalf of the applicants; that

the Tribunal did not properly appreciate the facts and circumstances of the case and erroneously held all the points against the applicants and dismissed the claim of the applicants and ultimately, prayed to set aside the findings recorded by the Tribunal and grant compensation as prayed for i.e., Rs.4,00,000/- along with interest thereon.

4. On the other hand, learned Standing Counsel for the respondent/Railways would contend that A.W.2 was pressed into service to establish the purchase of a ticket by the deceased Jangili Bhoomaiah; that the dead body was found in the middle of the railway track i.e., in between the track on the loop line of platform No.2 of Mahabubabad Railway Station; that the applicants failed to prove the purchase of the ticket by the deceased Jangili Bhoomaiah as well as the death as an incident of accident caused by train No.8561 Dakshin Link Express; that the Tribunal elaborately dealt with the oral and documentary evidence on record and recorded the findings; that there is no infirmity in the impugned order and ultimately, prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the points that arise for determination are:-

“1. Whether the deceased Jangili Bhoomaiah was a bona fide passenger of train No.8561 Dakshin Link Express travelling from Khammam to Warangal on 7/8.1.2006?”

2. Whether the deceased Jangili Bhoomaiah died in an untoward incident of accidental fall from train No.8561 Dakshin Link Express on 7/8.1.2006? and

3. Whether the order, dated 06.12.2013, passed in O.A.A.No.529 of 2006 by the Tribunal is liable to be set aside?"

6. POINT Nos.1 & 2:-

To substantiate the contentions, the applicants got examined A.Ws.1 and 2 and got marked Exs.A-1 to A-5. Ex.A-1 is the F.I.R. Ex.A-2 is the Inquest Report. Ex.A-3 is the Post Mortem Examination Report. Ex.A-4 is the Final Report. Ex.A-5 is the Family Members Certificate. No oral or documentary evidence is adduced on behalf of the Railways.

7. A.W.1 is not a direct witness to the purchase of a ticket by the deceased Jangili Bhoomaiah or occurrence of the subject accident. A.W.2 deposed that the deceased Jangili Bhoomaiah purchased the ticket, but he did not specifically state that he witnessed the deceased Jangili Bhoomaiah purchasing the ticket. No journey ticket was found in the possession of the dead body of the deceased Jangili Bhoomaiah or in the vicinity of the place of death. There is no specific mention about the deceased Jangili Bhoomaiah purchasing a ticket in the presence of A.W.2. Further, A.W.2's statement was recorded during the course of investigation wherein he did not disclose about the purchase of ticket by the deceased Jangili Bhoomaiah. Further, in Ex.A-4 – Final Report, it is mentioned that the blood relations of the deceased Jangili Bhoomaiah suspected that G.Rajeswar was responsible for the death of the deceased Jangili Bhoomaiah. Further, under Ex.A-2 – Inquest Report, the dead body of the deceased Jangili Bhoomaiah was found in the middle of the railway track i.e., in between the rails on the loop line of platform No.2 of Mahabubabad Railway

Station. The applicants have complained that the deceased Jangili Bhoomaiah was travelling by train No.8561 Dakshin Link Express from Khammam to Warangal on 7/8.1.2006 and had an accidental fall from the train while getting down. In such event, it is not possible for the deceased Jangili Bhoomaiah to come in between the rails on the loop line of platform No.2 of Mahabubabad Railway Station. The pleadings and evidence are inconsistent with the place where the dead body of the deceased Jangili Bhoomaiah was found. Had it been an accidental fall from the train, the dead body could have been found near the railway track and not in between the rails. So, as seen from the place where the dead body of the deceased Jangili Bhoomaiah was found, it is clear that the death of the deceased Jangili Bhoomaiah is not due to an accidental fall from train No.8561 Dakshin Link Express travelling from Khammam to Warangal on 7/8.1.2006. Having analysed the entire evidence on record, the Tribunal recorded the finding that the deceased Jangili Bhoomaiah was not a *bona fide* passenger and his death was not an untoward incident of accident i.e., by accidental fall from the train. There is no infirmity in the impugned order.

8. **POINT No.3:-**

Basing on the oral and documentary evidence on record, the Tribunal recorded the findings. In that view, non-examination of any witness or marking of documents by the respondent/Railways is not fatal to the case of the respondent/Railways. The findings of the Tribunal are based on record. There is no infirmity in the

impugned order. The appeal is devoid of merits and is liable to be dismissed.

9. Accordingly, the Civil Miscellaneous Appeal is dismissed.
There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in this appeal shall stand closed.

DR.JUSTICE SHAMEEM AKTHER

Date : 01.10.2018
AMD



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